APPENDIX A

United States District Court
Northern District of Georgia
Atlanta Division

Atlanta and West Point Railroad Company and Western Railway of Alabama vs. United Transportation Union, an unincorporated Labor Union; and C. M. Cagle, 1999 Meador Avenue, S.E., Atlanta, Georgia, Individually and as Representative of such class	Civil Action No. 13269

ORDER

(Filed June 30, 1970)

By previous order in this case the court directed the parties to proceed with negotiations pursuant to the Railway Labor Act and the union was enjoined from striking until the provisions of the Railway Labor Act have been complied with.

Thereafter, negotiations were undertaken, they continued for parts of four days (some 17 hours) at which time all differences between the union and the carrier were resolved except one: the duration of the period of apprenticeship. The union insisted that the apprenticeship, for inexperienced railroad men, should continue for a period of not less than one year. The railroad, on the

other hand, held out for an indeterminate period depending upon the candidate's ability to master the job. The parties being unable to resolve this issue, negotiations were called off and the carrier invoked mediation pursuant to the Act.

At least two meetings were held before the mediator, after which mediation was adjourned, and nothing else has transpired, for what reason neither party seems to know.

With the proceeding in this posture the union has come back before the court with a charge (1) that the railroad refused to negotiate, (2) that it was determined not to reach any agreement when negotiations started, and (3) that the negotiations by the carrier were conducted in bad faith. They ask that the carrier be cited for contempt for failing to comply with the order of the court directing negotiations, that the carrier be punished for contempt and that the union be relieved of the anti-strike injunction.

It is undisputed that for whatever reason the controversy is now lodged before the Mediation Board, and the court expresses extreme doubt whether it has any jurisdiction, at this stage, to go back to an antecedent stage of the proceedings and consider whether or not there had been negotiations or whether such negotiations were conducted in good faith. Apparently the Mediation Board thought there had been good faith negotiations or it would not have taken jurisdiction. As the court construed the Railway Labor Act, once proceedings thereunder are commenced they must be carried through all of the stages as the Act requires, whereupon, if the parties are unable to reach an agreement each may resort to self-help. The parties being still in the process of going through these stages, the court declines at this time to usurp the func-

tions of the Mediation Board by going back and making evidentiary findings about antecedent negotiations.

The court is aware that it may be in error in the decision just reached, and in order that there will be no unnecessary delay if this should prove to be the case, the court has heard evidence and arguments of counsel about the conduct of the negotiations and makes the following findings:

(1) That the plaintiff carrier did not refuse to negotiate in violation of the court's previous order;

(2) That the negotiations carried on were carried on by the carrier in good faith; and

(3) That the plaintiff carrier is not in contempt of this court.

For all of these reasons defendant's motion is DENIED.

IT IS SO ORDERED.

This 29 day of June, 1970.

/s/ NEWELL EDENFIELD
NEWELL EDENFIELD
United States District Judge

APPENDIX B

Memo Agreement
Between
Atlanta and West Point Rail Road Company
The Western Railway of Alabama
and
United Transportation Union (E)

As a means of establishing an accelerated program for the training and qualifying of locomotive firemen-helpers to become locomotive engineers, it is agreed:

1. Fireman-trainee will be given a temporary seniority date as fireman (helper) on the date training begins and will receive training in seniority order.

2. (a) Candidates employed by the Carrier for this program will be over 21 years of age and have a minimum of a high school education. Upon passing the entry requirements, the candidate will be given a temporary date as fireman on the date training begins. Should such fireman fail to complete the initial training, or satisfactorily progress in this program, within sixty (60) days, his name will be dropped from the list; otherwise, his seniority date becomes permanent and he will relinquish seniority he may hold in other crafts.

   (b) A fireman-trainee who fails the first examination for promotion will be given a second opportunity following an additional thirty (30) days training. If he fails the second time, his name will be removed from the firemen's seniority list.

3. (a) A fireman-trainee will be paid $763.89 per month. To receive the full rate he must be available

for a minimum of twenty-two days per month. The prorated daily rate of $34.72 may be deducted for each of the twenty-two days he is not available of his own volition.

(b) A fireman trainee may be used to fill a fireman's vacancy in emergency. For such service he will be paid the applicable rate. The amount so made on the day or trip to a maximum of $34.72 will be included in the monthly rate.

(c) Firemen-trainees will be covered by the national health and welfare plan (Group Policy Contract GA-23000), subject to the approval of the parties to the policy.

4. Firemen-trainees will be reimbursed for actual, reasonable and necessary travel, lodging and meal expenses incurred while engaged in orientation and classroom sessions or while otherwise headquartered at points beyond commuting distances from the home terminal of the fireman's seniority district. Such employee will use lodging facilities provided for operating employees at points where made available.

5. (a) Firemen will establish seniority as engineers in accordance with joint rules.

(b) A fireman-trainee in this program will not be examined for promotion until after he has had a minimum of one years service as a trainee and fireman, including service (if any) in another operating craft. The service herein is not necessarily limited to these lines. A fireman-trainee employed from another operating craft of these lines will retain years of service for vacation, health and welfare and other benefits.

(c) A fireman who completes this program and qualifies as an engineer will not be deprived of

employment by the A&WP-WofA by force reduction while there is a blanked fireman's assignment. Such firemen will be treated the same as protected C-6 or C-7 employees under requirements of Award No. 282.

6. Testing will be done at time periods designated by the Carrier. Employees will be furnished textbooks and other materials without cost.

7. (a) The Carrier will establish and execute the training program and will establish requirements for completion.

(b) The General Chairman will be furnished with an outline of the training program and a statement of the established requirements for completion.

(c) The General Chairman will be furnished with the name of each candidate and the date he is placed in training.

8. This agreement is made without prejudice to the position of either party with respect to any pending or future litigation and/or negotiation and will not be cited or referred to by either party or their representatives in negotiations on this railroad or any railroad or in national handling without written consent of the other party, except as may be necessary to assure compliance with the terms of this agreement.

9. The provisions of this agreement will modify and/or supplant existing UTU-E agreements in conflict therewith only to the extent necessary to give effect to the purpose and intent of this agreement.

10. (a) This agreement is not to be used to determine the number of members to be assigned to any crew. It is an interim settlement of the notice served upon the Carrier by the Union on November 15, 1965,

dealing with a training program subject to the conditions contained in this Section 10.

(b) This agreement will be superseded by the agreement or agreements if and when reached on a national basis dealing with training for promotion to engineer.

(c) Nothing contained herein is intended to modify in any way any provision of any of the joint rules.

(d) This agreement shall become effective May 7, 1971, subject to part (b) of this section, and shall remain in full force and effect until cancelled by either party serving thirty (30) days advance written notice, upon the other party; provided, however, that employees already under training in the program may continue, unaffected thereby, to completion or termination of their training, and, provided further, that this agreement shall be null, void and of no further force and effect if determined, judicially or otherwise, to be contrary to law or public policy.

Signed in Atlanta, Georgia, this 7th day of May, 1971.

For The United Transportation Union (E):

/s/ L. Stifflemire
L. Stifflemire
General Chairman

Approved:

/s/ R. L. McCollum
R. L. McCollum
Vice President—UTU

For The Atlanta and West Point Rail Road Company—
The Western Railway of Alabama:

/s/ T. P. King
T. P. King
Director of Personnel